

1 FRANK T. PEPLER (SBN 100070)  
2 PEPLER MASTROMONACO LLP  
3 100 First Street, 25<sup>th</sup> Floor  
4 San Francisco, CA 94105  
5 Telephone: (415) 978-9860  
6 Facsimile: (415) 978-9862

7  
8 Attorneys for Creditor  
9 CITY NATIONAL BANK, N.A.

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13 In re:

Case No. 09-41727-EDJ

Chapter 11

14 A.F. EVANS COMPANY, INC.,  
15 Debtor.

**APPELLEE'S COUNTER-DESIGNATION  
OF ITEMS TO BE INCLUDED IN THE  
RECORD ON APPEAL AND STATEMENT  
OF ISSUES TO BE PRESENTED**

16  
17  
18 This Appellee's Counter-Designation of Items to be Included in the Record on Appeal  
19 and Statement of Issues to be Presented arises out of the appeal by the Official Committee of  
20 Unsecured Creditors ("Committee") in the Chapter 11 case of A.F. Evans Company, Inc.  
21 ("AFE") of an order issued in favor of City National Bank, N.A. ("CNB") on CNB's motion to  
22 compel disbursement of sales proceeds of AFE property subject to CNB's pre and post-petition  
23 security interests. Appellee CNB was the pre-petition secured lender to AFE and held security  
24 interest in all personal property assets of AFE perfected by the filing of a UCC1 Financing  
25 Statement on August 9, 2004 as document 04-1000359638 (the "CNB Original Filing"). This  
26 Counter-Designation is made pursuant to Rule 8006 of the Federal Rules of Bankruptcy  
27 Procedure, and CNB hereby designates the following items for the record on appeal and submits  
28 its statement of the issues to be presented in connection with the Committee's Notice of Appeal

1 Order – Motion Requiring Debtor to Remit Sales Proceeds, Entered on July 9, 2009 [Docket No.  
2 202], filed on July 16, 2009.

### 3 DESIGNATION OF RECORD

- 4 1. Stipulation Regarding Cash Collateral and Adequate Protection [Docket No. 14],  
5 filed on March 9, 2009.
- 6 2. Amendment to Stipulation Regarding Cash Collateral and Adequate Protection  
7 [Docket No. 26], filed on March 10, 2009.
- 8 3. Order Approving Stipulation Regarding Cash Collateral and Adequate Protection  
9 on an Interim Basis [Docket No. 73], filed March 27, 2009.
- 10 4. Second Amendment to Stipulation Regarding Cash Collateral and Adequate  
11 Protection [Docket No. 105], filed April 16, 2009.
- 12 5. Order Approving Debtor's Continued Use of Cash Collateral Pursuant to Revised  
13 Second Amendment to Stipulation Regarding Cash Collateral and Adequate  
14 Protection [Docket No. 117], filed April 28, 2009

### 15 STATEMENT OF ISSUES

16 1. Did the Bankruptcy Court properly hold that the CNB Original Filing did not  
17 become "seriously misleading" under California Uniform Commercial Code section 9506(a)  
18 when, on January 28, 2009, UCC3 amendment document 0971859849, was filed to release  
19 CNB's security interest in Westgate Housing, L.P., and UCC3 amendment document number  
20 0971859885, was filed to release CNB's security interest in Greenery Housing Associates, LTD,  
21 when in those UCC3 amendments both the "Delete Collateral" box 8 was checked and a specific  
22 description of the Westgate and Greenery partnership interests was given, and the "Termination"  
23 box 2 was also manually checked before the UCC3 amendments were filed.

24 2. Did the Bankruptcy Court properly hold, pursuant to California Uniform  
25 Commercial Code Section 9510(a), that the UCC3 amendments filed on January 28, 2009 as  
26 records no. 0971859849 and 0971859885 were effective only to the extent required to release the  
27 "Greenery" and "Westgate" partnership interests described therein from the scope of CNB's  
28 Original Filing.

1           3.       Did the Bankruptcy Court properly hold, pursuant to California Uniform  
2 Commercial Code Section 9510(a), that the scope of authority that CNB gave to amend the CNB  
3 Original Filing was limited to the release therefrom of the CNB's interest in AFE's interest in the  
4 "Westgate" and "Greenery" partnerships.

5  
6 Dated: August 5, 2009

PEPLER MASTROMONACO LLP

7  
8 By:           /S/            
9 Frank T. Pepler (CA Bar No. 100070)  
10 Attorneys for City National Bank, N.A.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28